

U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 26Mar2001

Case No: 1998-TSC-00006

In the Matter of

DOMINIC A. AMATO,

Complainant,

v.

ASSURED TRANSPORTATION AND DELIVERY INCORPORATED,

Respondents.

RECOMMENDED DECISION AND ORDER

This proceeding arises under the employee protection provisions of the Toxic Substances Control Act, 15 U.S.C. § 2622 and the Secretary's implementing regulations found at 29 C.F.R. Part 24 (2000). A notice had been issued for a final hearing which was to take place on October 30, 2000. After negotiations in which the claimant, Dominic Amato and his former employer, Assured Transportation and Delivery Inc., were represented by counsel, they submitted a Settlement Agreement and Mutual General Release to me for approval on October 24, 2000. I could not approve their agreement as it was written, as I explained in the Order Denying Approval of Settlement Agreement entered on October 31, 2000. I made some suggestions for the resolution of the problems in the settlement documents. The parties revised their agreement and have filed on March 19, 2001 a new Request for Dismissal after Settlement Pursuant to 29 C.F.R. § 18.9.

This new settlement agreement document is signed by claimant, counsel for the claimant, and by the former employer, and by counsel for the former employer. A copy of the new Settlement Agreement

and Mutual General Release is attached to this Order, to be served on counsel for the complainant, respondents and Secretary of Labor.

This Recommended Decision and Order will constitute the final order of the Secretary of Labor unless appealed to the Administrative Review Board. 29 C.F.R. § 24.7. Therefore, it is my responsibility to determine whether the terms of the settlement agreement are a fair, adequate and reasonable settlement of the complaint. *See* 29 C.F.R. § 24.6; *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't. of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, March 23, 1989, slip op. at 1-2.

Review of the settlement and mutual general release agreement shows that it is intended to apply all matters, including any unknown claims, so it covers more than the rights created under the employee protection provisions of the Toxic Substances Control Act, 15 U.S.C. § 2622 (1994) and the Secretary's regulations. *See* Settlement Agreement and Mutual General Release ¶6. As explained by the Administrative Review Board in *Poulos v. Ambassador Fuel Co. Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2:

[The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. *See Aurich v. Consolidated Edison Co. of New York, Inc.*, Case No. [86-] CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

I have therefore limited my review of the agreement to determine whether the terms are a fair, adequate and reasonable settlement of complainant's allegations that the respondents violated the Toxic Substances Control Act and any other federal employee protection statutes under my jurisdiction.

Paragraph 17 of the Settlement Agreement and Mutual General Release provides that the terms of their agreement are not entirely confidential, because the settlement documents may be released to a member of the public who requests a copy of it from the Department of Labor under the Freedom of Information Act, 5 U.S.C. §§ 522. Department of Labor regulations provide specific procedures for responding to Freedom of Information Act requests, for appeals by requesters from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70 (2000). The parties have agreed that they will not disclose the terms of the settlement themselves except in limited circumstances (*viz.*, to taxing authorities, to necessary third parties such as attorneys and accountants, to immediate family members, and in response to subpoenas or court orders compelling disclosure). They will otherwise limit themselves to the statement that the parties "have steeled their differences." With the acknowledge that their settlement documents are subject to the

Freedom of Information Act, the agreement is acceptable. I recommend approval of the Settlement Agreement and Mutual General Release with the understanding the Department of Labor will address any Freedom of Information Request in accordance with 29 C.F.R. Part 70 (2000).

The Administrative Review Board requires that all parties seeking approval of a settlement agreement arising under the Toxic Substances Control Act provide the settlement documentation for any other alleged claim arising from the same factual circumstances forming the basis of the federal claim or to certify that no other settlement agreements were entered into by the parties. *Biddy v. Alyeska Pipeline Service Co.*, ARB Case Nos. 96-109, 97-1015, Final Order Approving Settlement and Dismissing Complaint, Dec. 3, 1996, slip op. at 3. The parties have represented in ¶ 6 of the agreement that, besides this action, “there are no other claims pending or contemplated”

I find that the Settlement Agreement and Release is a fair, adequate and reasonable settlement of the complaint involved in this proceeding. Therefore, it is hereby RECOMMENDED that the Request for Dismissal after Settlement Pursuant to 29 C.F.R. § 18.9, together with the Settlement Agreement and Mutual General Release, be granted.

A
William Dorsey
Administrative Law Judge